

Applicant: Eckhardt Jr. et al.
Application No.: 10/786,397

REMARKS/ARGUMENTS

Claims 1-3 are currently pending.

The undersigned thanks the Examiner for the brief telephone call on July 26, 2005, in which the Examiner and the undersigned discussed the second rejection (see below). In that telephone conference, the Examiner asked the undersigned to clarify the priority and inventorship in the current application.

The Action contained three separate rejections. Each of these is addressed in turn.

First, the Action rejected claims 1-3 as claiming the same invention as claimed in U.S. Application No. 10/312,072 (U.S. Pub. No. 2003/0162598). Since this rejection, the Applicant abandoned Application No. 10/312,072. See attached PAIR printout confirming that the application has lapsed due to abandonment. Thus, since there are no longer pending identical claims, this rejection is no longer believed necessary.

Second, the Action rejected claims 1-3 over the parent publication, the aforementioned earlier U.S. Application No. 10/312,072 (U.S. Pub. No. 2003/0162598). Since the current application claims priority to this earlier application, the earlier application is not prior art to the pending claims, and this rejection is believed overcome.

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Third, the Action rejected the claims as potentially having misidentified the inventors. In response, the Applicant provides a brief explanation. The earlier parent application 10/312,072 listed five inventors. That earlier application was subject to a restriction, and the current application's claims were based on some of those restricted claims. The restricted claims shared 3 inventors in common with the original application: Messrs. Eckhardt, Jr., Heffernan, and Howe. See Declaration of Franz Charles Eckhardt, Jr., paragraph 8 (enclosed). This application does not list Messrs. Eckhardt, Sr. or Roche because they did not invent the subject matter claimed herein. See Declaration of Franz Charles Eckhardt, Jr., paragraphs 9 and 10. Thus, since neither Mr. Eckhardt, Sr. nor Mr. Roche invented the subject matter claimed herein, this rejection is believed to be overcome.

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Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing remarks, Applicants respectfully submit that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Eckhardt Jr. et al.

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Enclosures (2)